

III generally requires a federal court to satisfy itself of its jurisdiction over the subject matter before it considers the merits of the case...").

The Court should not require parties to litigate the merits of a cause of action over which the Court has no jurisdiction. To the contrary, "without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is the power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Steel Co., 523 U.S. at 94 (emphases added) (quoting Ex parte McCardle, 74 U.S. 506, 514 (1968)). Where the Court lacks jurisdiction over a cause of action, "a defendant should not be put to the trouble and expense of any further proceeding, and the time of court should not be occupied with any further proceeding...." United Transport Serv. Employees of America, CIO v. Nat'l Mediation Board, 179 F.2d 446,454 (D.C. Cir. 1949).

Appellate Court Error:

When in that Unpublished Opinion entered by the Court of Appeals for the Eleventh Circuit it was declared that the Mediation Agreement resolved all remaining issues, was the Court of Appeals in error?

If, supposing that the petitioner is correct in the jurisdictional question, and the District Court had stripped itself of jurisdiction except for that jurisdiction to reopen the case and set for immediate trial, did the appeals court err by refusing to address the remaining issues presented on appeal?

When petitioner presented his appeal before the Court of Appeals it would first be required that the Appeals Court resolve the jurisdictional question regarding the jurisdiction of the District Court to enter an order "enforcing a

mediation agreement which had not been previously entered by the Court as part of a Final Judgment". The District Court had in effect by previous orders limited itself to strictly an "Order to Reopen the Case and Set for Trial on the Merits". Use of an evidentiary hearing and sanctions to bypass that jurisdictional limitation established by Article III and entering a "Reneged Mediation Agreement" and then retaining and granting itself that jurisdiction to enforce is in violation of Article III, United States Constitution which defines the limit's of the jurisdiction of United States District Courts.

REASON FOR GRANTING PETITION AND CONCLUSION

Upon reopening the case on February 7, 2005, the Court's jurisdiction was limited to placing the case back on the trial docket and proceeding with litigation which would not deny the appellant of due process as required under the United States Constitution, 14th Amendment and as stated within the District Court Order of December 22, 2004.. For the foregoing reasons this petition should be granted.

Respectfully submitted,

/s/
Mohammed Husein Bhadelia
Mohammed Farooq Bhadelia
P.O. Box 290007
Tampa, Florida 33687-0007
(813)933-7848
Petitioners

**PETITIONER'S
APPENDIX**

Opinions and Orders of Lower Courts
Mandate of Court of Appeals
Final Judgment of District Court
**Mediation Agreement as incorporated into Final
Judgment**
Order of District Court February 7, 2005
Order of District Court December 22, 2004
Order of District Court September 29, 2004
Order of District Court August 27, 2004

[DO NOT PUBLISH]
IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
No. 05-11292
Non-Argument Calendar

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 27, 2005
THOMAS K. KAHN CLERK

D.C. Docket No. 03-01189-CV-T-26TGW

MOHAMMED HUSEIN BHADELIA, an individual and citizen of Karachi Pakistan, MOHAMMED FAROOQ BHADELIA, an individual and citizen of the U.S.A.,

Plaintiffs-Counter-Defendants-Appellants,

versus

MARINA CLUB OF TAMPA, HOMEOWNERS ASSOCIATION, INC., A Florida (F.S. Chapter 720) corporation,

Defendant-Counter-Claimant-Appellee.

Appeal from the United States District Court for the
Middle District of Florida

(July 27, 2005)

Before TJOFLAT, DUBINA and HULL, Circuit Judges.

PER CURIAM:

Plaintiffs Mohammed Husein Bhadelia and

Mohammed Farooq Bhadelia, who are brothers, appeal the district court's enforcement of a settlement agreement between them and defendant Marina Club of Tampa, Homeowners Association, Inc. ("Marina Club"). After review, we affirm.

L BACKGROUND

A. The Dispute

Husein Bhadelia is a citizen and resident of Pakistan. His brother, Farooq Bhadelia is a citizen of the United States of America.

In 1993, Husein Bhadelia purchased three condominium buildings in Tampa, Florida. Two of the condominium buildings were complete, but the third was merely an open shell and construction site. After Husein Bhadelia purchased the buildings, his brother, Farooq Bhadelia, acted as Husein Bhadelia's agent and sold most of the remaining units in the two completed buildings. However, the Bhadelias allowed the third building to remain an open shell and construction site.

The condominium unit owners in the two other buildings were upset with the appearance of the unfinished building and the effect it was having on property values. For the next ten years, the Bhadelias and the Marina Club, which served as the homeowners association for the condominium unit owners, periodically engaged in disputes over the unfinished building.

On August 1, 2003, the Bhadelias filed an amended complaint against Marina Club alleging that the Marina Club: (1) retaliated against them in violation of the Americans with Disabilities Act and the Federal Fair Housing Act; (2) discriminated against them after the September 11, 2001 attacks; (3) improperly placed liens on the Bhadelias' property; and (4) fraudulently represented that it had authority to manage the common areas of the condominium complex.¹

The Marina Club filed a counterclaim seeking: (1) title to all common areas and amenities; (2) title to the

unfinished building and all other non-developed land; and (3) an injunction preventing the Bhadelias from maintaining a nuisance.

B. The Settlement

On July 7, 2004, the district court referred the parties to court-ordered mediation. Husein Bhadelia did not attend the settlement conference, but his brother, Farooq Bhadelia, and the Bhadelias' attorney did. The Bhadelias' attorney at the mediation was the same attorney who filed the amended complaint.

After more than eleven hours of mediation, Farooq Bhadelia and Marina Club reached a settlement. The settlement agreement is signed by Farooq Bhadelia on behalf of Husein Bhadelia. According to the terms of the settlement, Husein Bhadelia would retain title to the unfinished building, but was subject to certain deadlines for the completion of the unfinished building, and Marina Club would pay \$675,000 for title to the amenities, common areas, and two additional parcels of land.

After the parties reached the above settlement, Husein Bhadelia rejected the settlement and claimed that his brother, Farooq Bhadelia, acted outside the scope of his authority in entering into the settlement. Unable to get the Bhadelias to comply with the terms of the settlement, the Marina Club filed a motion to enforce the settlement agreement in federal district court. C. Hearing Before the District Court

The district court conducted an evidentiary hearing into whether Farooq Bhadelia had the authority to enter into the settlement agreement on behalf of Husein Bhadelia. As with the settlement conference, Husein Bhadelia did not attend the evidentiary hearing.

At the evidentiary hearing, the mediator testified that he "was told that everybody was represented [at the settlement conference] that could bind the parties to an agreement." Furthermore, Farooq Bhadelia testified that he acted as his brother's agent in selling units in the two

completed condominium buildings. Farooq Bhadelia also stated that he acted with his brother's authority when filing the lawsuit against the Marina Club and when beginning the settlement negotiations. Finally, the Bhadelias' attorney testified that "in the past 15 years of representing Mr. [Farooq] Bhadelia, I had never known him to need specific authority from his brother [Husein Bhadelia] to do anything he was doing on behalf of his brother."

At the conclusion of the evidentiary hearing, the district court determined that Farooq Bhadelia acted within the scope of his authority as Husein Bhadelia's agent. Consequently, the district court granted the Marina Club's motion to enforce the settlement agreement. The Bhadelias appeal.

II. DISCUSSION

We review a district court's decision to enforce a settlement agreement for an abuse of discretion. Haves v. Nat'l Serv. Indus., 196 F.3d 1252, 1254 (11th Cir. 1999). Furthermore, we look to state law when determining whether an agent had authority to enter into a settlement agreement. *Id.* In Florida, a principal is liable for the acts of its agent under both express and apparent authority. Stiles v. Gordon Land Co., 44 So.2d 417, 421 (Fla. 1950). "By apparent authority is meant, such authority as the principal wrongfully permits the agent to assume or which the principal by his actions or words holds the agent out as possessing." *Id.*

In this case, there is no dispute that Husein Bhadelia authorized Farooq Bhadelia to bring the initial suit against the Marina Club. Furthermore, Farooq Bhadelia acted as Husein Bhadelia's agent in selling condominium units from the finished buildings. Finally, both Farooq Bhadelia and the Bhadelias' attorney testified that Farooq Bhadelia had the authority to enter into settlement negotiations. Given these circumstances,

the district court did not err in concluding that Farooq Bhadelia had the authority to settle the lawsuit on Husein Bhadelia's behalf, and, thus, the district court did not abuse its discretion when enforcing the settlement.²

AFFIRMED.

1. The Bhadelias filed an initial two-count complaint on June 6, 2003. We address the amended complaint because it contains the claims that went to mediation.
2. The Bhadelias' remaining issues on appeal, such as the district court's initial denial of their motion to dismiss the Marina Club's counterclaim before sending the case to settlement, are without merit and not discussed further. The settlement agreement resolved the entire case.

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
JULY 27, 2005
THOMAS K. KAHN CLERK

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MOHAMMED HUSEIN BHADELIA, et al,
Plaintiffs,

v.

CASE NO: 8:03-cv-1189-T-26TGW

MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION, INC., et al.,
Defendants.

FINAL JUDGMENT

UPON DUE CONSIDERATION of the parties' written submissions, evidence and testimony, and oral arguments, and for the reasons announced on the record at the evidentiary hearing held in this case this day, it is ORDERED AND ADJUDGED as follows:

- 1) Defendant's oral Motion to Enforcement Settlement Agreement is granted.
- 2) The terms of the written mediated Settlement Agreement introduced into evidence by Defendant as Exhibit 1 is incorporated herein by reference and final judgment on each count of Plaintiffs' complaint and on each count of Defendant's counterclaim is hereby entered in accordance with its terms.
- 3) To the extent the Plaintiffs sought relief not granted by the Mediated Settlement Agreement, Plaintiffs shall recover nothing by their action and Defendant shall go hence without day.
- 4) To the extent the Defendant sought relief not granted by the Mediated Settlement Agreement, Defendant shall recover nothing by their action and Plaintiffs shall go hence without day.
- 5) Title to Plaintiff, Mohammed Husein Bhadelia's Property described on Exhibit "A" to the Mediated Settlement Agreement which was conveyed to

him by the Resolution Trust Corporation by that certain Special Warranty Deed recorded at O.R. Book 6850, Page 1705 of the Public Records of Hillsborough County, Florida, less and except Building 'N' and the five (5) foot perimeter surrounding the imprint of said Building 'N' and Units LI 06 and A112 is hereby quieted in the name of the Defendant, Marina Club of Tampa Homeowners' Association, Inc.

6) This Court retains jurisdiction to enforce the terms of the Mediated Settlement Agreement and this Final Judgment and to add a corrected legal description, if necessary, following the completion of a survey of the Property and an examination of its title.

7) The Clerk is directed to close the file.

DONE AND ORDERED
at Tampa, Florida, on February 24, 2005.

BY THE COURT:

/S/ Richard A. Lazzara
 Richard A. Lazzara
 United States District Judge

COPIES FURNISHED TO:

Counsel of Record
Any *pro se* parties

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MOHAMMED HUSEIN BHADELIA, et Al
Plaintiffs,
NO.: 8:03-cv- 1189-T-26TGW
vs.
CASE

MARINA CLUB OF TAMPA HOMEOWNERS.
ASSOCIATION, INC., et al.,

Defendants.

Settlement Agreement

I. In this settlement agreement the CRE's shall refer to that certain First Amendment and First Supplemental Declaration of Covenants, Restrictions and Easements for The Marina Club of Tampa recorded at O.R. Book 4239 Page 484, of the Public Records of Hillsborough County.

II. Building "N" - Title to Building "N"

A. Defendants will stipulate to the entry of a Judgment quieting title to Building N/ and the five foot perimeter surrounding (the 'building N property') as depicted in the attached; subject however to the following conditions:

B. Time restraints

1. Plaintiffs shall apply for a building permit for completion of the dwelling units in Building N within 120 days.

2. Building N construction must be completed and certificates of occupancy issued for all dwelling units in Building N within 2 years of issuance of the building permit.

3. The Plaintiffs must obtain a building permit for the completion of Building N within 2 years of application.

4. Failure to meet the above time frames, except for force majeure, shall result in the HOA having a lien on the Building N property in the amount of \$1,000 per day.

C. The Units in Building N shall be offered for sale and shall not be held by Plaintiffs as rental units.

D. The building N property shall be deemed to be encumbered by the CRE's and thereby, all owners of dwelling units in Building N shall be members of the HOA.

E. Building N property shall be submitted to a declaration of condominium.

F. HOA assessments on each dwelling units in Building N will be assessed upon the sale of the dwelling unit by the Plaintiffs. No votes in the HOA shall inure to the dwelling units in Building N until sold by the Plaintiffs.

III. Payment and Conveyance

A. Defendant shall pay the Plaintiffs \$675,000 within 120 days of the date of the Order pursuant to this settlement is entered by the Judge.

B. Plaintiffs shall convey to Defendant, free and clear of any liens and encumbrances what so ever, all of the *property* now owned by the Plaintiffs which was conveyed/held certain Special Warranty Deed recorded at O.K. Book 6850, Page 1705 of the Public Records of Hillsborough County Florida, save the Building N Property and units LJ06 and A 112. The CRE's shall not

be considered an encumbrance as that term is used in this paragraph.

C. Plaintiffs will stipulate to the entry of a Judgment quieting title in the defendants to the property conveyed.

IV. Approval of Settlement by Board of Directors of Defendant

A. Within 21 days of the execution hereof the Defendant shall schedule and hold a meeting of its Board of Directors to approve this settlement and the necessary financing to fund the settlement. This settlement is conditioned upon the approval by the Board of Directors of Defendants within said 21 days and obtaining the necessary financing 120 days.

V. Confidentiality Clause

A. The Plaintiffs shall keep the terms of this settlement confidential until the date on which the Order is entered pursuant to this settlement.

Approved by:

/s/ Mohammed Husein Bhadelia signed by Farooq Bhadelia

Mohammed Husein Bhadelia by Mohammed Farooq Bhadelia

/s/ Patricia J. Mira

Marina Club of Tampa Homeowner's Association,
Inc. et. al.

/s/ Guy O. Spicola

Mediator Hon. Guy Spicola
August 23, 2004

Date:

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al,

Plaintiffs,

v.

CASE NO: 8:03-cv-1189-

T-26TGW

MARINA CLUB OF TAMPA HOMEOWNERS
ASSOCIATION, INC., et al.,

Defendants.

ORDER

Before the Court is Defendant's motion seeking relief from this Court's order of December 22, 2004, extending the time within which the parties could present the Court with stipulated form of final judgment in accord with then: mediated settlement agreement, as well other relief.' Upon due consideration, it is ordered and adjudged as follows:

1) The Motion for Relief (Dkt. 42) is granted.²

2) The Clerk is directed to reopen this case.

3) The Defendant's Request for Evidentiary Hearing (Dkt. 42) is granted. The Court will conduct an evidentiary hearing to determine whether the mediated settlement agreement should be enforced on Thursday, February 24, 2005, at 10:00 a.m., in Courtroom 15B, United States Courthouse, 801 North Florida Avenue, Tampa, Florida. The hearing shall continue for the duration of the day.

4) The Request for Order to Show Cause (Dkt.

42) is granted. Plaintiffs are directed to appear in person at the hearing, failing which this Court will have no other alternative but to draw such inferences as may reasonably be inferred from their absence.

5) Defendant is free to subpoena Donice Alien to ensure her attendance at the hearing.

6) Defendant's Motion to Enforce Mediation Agreement (Dkt. 42) is denied without prejudice to being renewed at the conclusion of the evidentiary hearing.

7) Defendant's Request for Sanctions (Dkt. 42) is denied without prejudice to being renewed at the conclusion of the evidentiary hearing.

8) Plaintiffs shall file a response to that aspect of Defendant's motion seeking enforcement of the mediated settlement agreement on or before February 21, 2005.

DONE AND ORDERED at Tampa, Florida, on
February 7, 2005.

/s/ Richard A. Lazzara
RICHARD A LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO,
Counsel of Record

¹ The Court entered this order hoping that a further extension of time would result in the parties finally resolving this case without court intervention and without the need to expend additional client and judicial resources. Obviously, the Court's hopes were dashed as evidenced by Defendant's motion.

² Because the Court clearly stated in its order of December 22, 2004, that the Court would have no alternative but to reopen this case if the parties did not present the Court with a stipulated final judgment, the Court needs no response from Plaintiffs.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiff(s),

v. CASE NO: 8:03-cv-
1189-T-26TGW

MARINA CLUB OF TAMPA, HOA, et al.,
Defendant(s).

ORDER

The Court is confronted by a Motion to Enforce Settlement Agreement filed by the Defendant Marina Club of Tampa Homeowners Association, Inc., in which the Court is asked to enter a proposed final judgment. As is obvious from the motion, however, the proposed final judgment is not a "stipulated form of final order or judgment" as required by this Court's order of August 27, 2004.

ACCORDINGLY, it is ORDERED AND ADJUDGED as follows:

- 1) The Motion to Enforce Settlement Agreement (Dkt. 39) is denied.
- 2) The Court once again amends its order of August 27, 2004, to provide that the parties shall have until February 4, 2005, within which to present a *stipulated* final judgment over which the Court will retain jurisdiction.

3) Counsel for the parties and, if necessary, the parties themselves or their representatives, shall engage in & *face-to-face* conference within 15 days of the date of the entry of this order at which they shall attempt in good faith to agree to a stipulated final judgment.

4) In the event the parties are unable to agree on a stipulated final judgment, the Court will have no other alternative but to reopen this case and schedule it for an immediate trial on the merits.

DONE AND ORDERED at Tampa, Florida, on December 23,2004.

/s/

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiffs),

v.

CASE NO: 8:03-cv-1189-T-26TGW
MARINA CLUB OF TAMPA, HGA, et al.,
Defendant(s).

ORDER

UPON DUE CONSIDERATION, it is
ORDERED AND ADJUDGED that Defendant Marina
Club of Tampa's Motion to Reopen (Dkt. 35) is denied
without prejudice. The Court will, however, amend
the order of August 27, 2004, to provide that the
parties shall have until January 3, 2005, within which
to present the Court with a stipulated final judgment
over which the Court will retain jurisdiction.

DONE AND ORDERED at Tampa, Florida, on
September 29, 2004.

/S/

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

COPIES FURNISHED TO:
Counsel of Record

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION
MOHAMMED HUSEIN BHADELIA, et al.,
Plaintiff(s).

v.

CASE NO: 8:03-cv-1 189-T-26TGW
MARINA CLUB OF TAMPA, HGA, et al.,
Defendant(s).

ORDER

The Court has been advised by the Mediator that the above-styled action has been settled. Accordingly, pursuant to Local Rule 3.08(b), M.D.Fla., it is

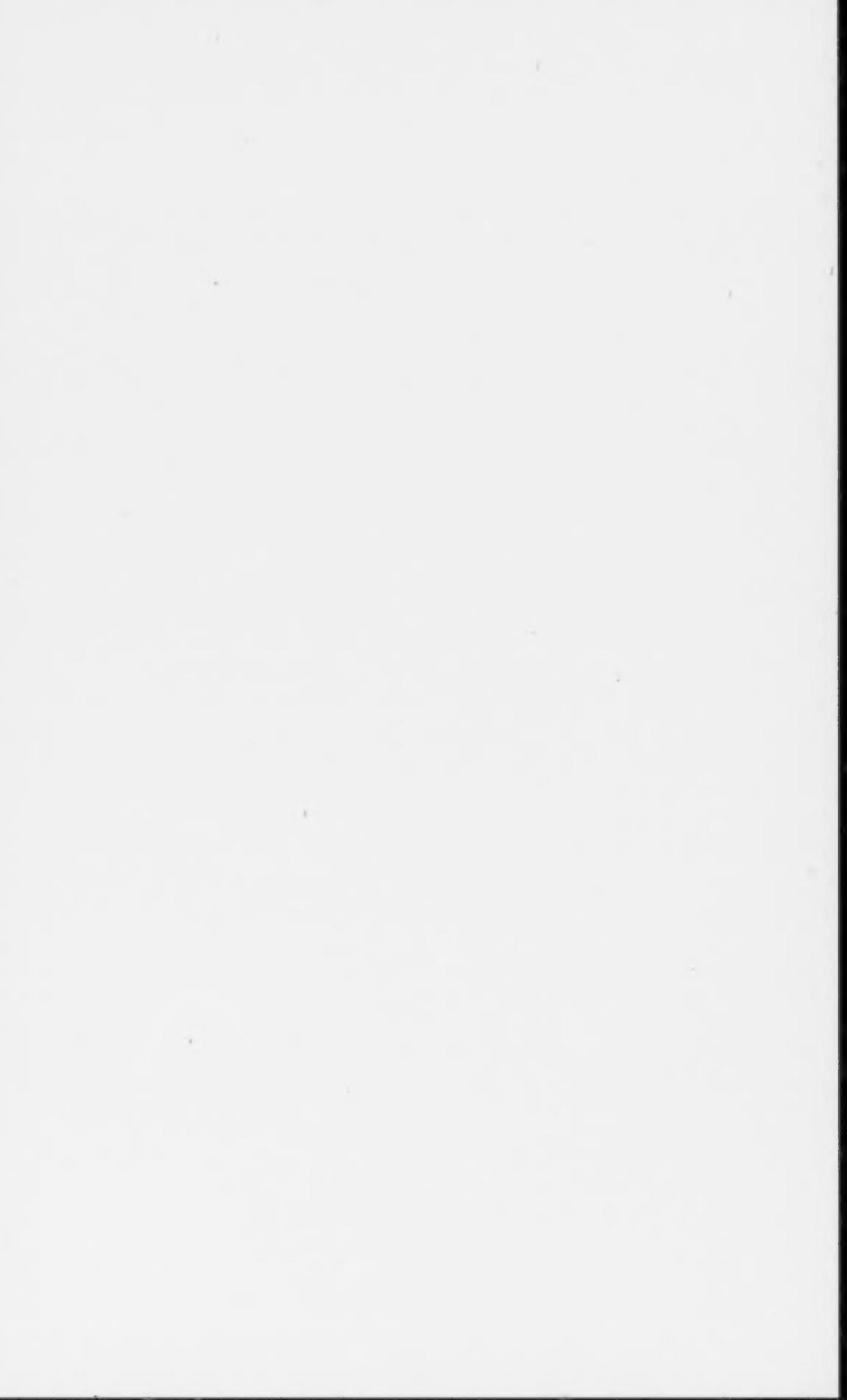
ORDERED AND ADJUDGED that this cause is hereby DISMISSED without prejudice and subject to the right of the parties, within sixty (60) days of the date of this order, to submit a stipulated form of final order or judgment should they so choose or for any party to move to reopen the action, *upon good cause shown*.

After that 60-day period, however, dismissal shall be with prejudice. All pending motions, if any, are DENIED as moot. The Clerk is directed to close the file.

DONE AND ORDERED at Tampa, Florida, on August 27, 2004.

/S/

RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE
COPIES FURNISHED TO:
Counsel of Record



(2)

No. 05-473

Supreme Court, U.S.
FILED

NOV 14 2005

OFFICE OF THE CLERK

In The

Supreme Court of the United States

MOHAMMED HUSEIN BHADELIA,

Petitioner,

vs.

MARINA CLUB OF TAMPA
HOMEOWNERS' ASSOCIATION, INC.,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eleventh Circuit

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

NEIL C. SPECTOR
Counsel of Record
KASS, SHULER, SOLOMON,
SPECTOR, FOYLE & SINGER, P.A.
1505 North Florida Avenue
Tampa, Florida 33602
Telephone: (813) 229-0900
Facsimile: (813) 229-3323

Counsel for Respondent
Marina Club of Tampa
Homeowners Association, Inc.

BEST AVAILABLE COPY

CORPORATE DISCLOSURE

Respondents are Marina Club of Tampa Homeowners' Association, Inc. There are no parent corporations or publicly held companies owning 10% or more of petitioner's stock.

TABLE OF CONTENTS

	Page
Corporate Disclosure.....	i
Table of Contents	ii
Table of Authorities.....	iii
Statement of the Case.....	1
I. Clarification of the Records.....	1
Reasons for Denying the Writ	3
I. Bhadelia Has Not Articulated a Compelling Reason To Justify Discretionary Review by this Court	3
II. The Lower Courts Did Not Err in Deciding this Case	9
Conclusion	11
Appendix.....	App. 1

TABLE OF AUTHORITIES

	Page
CASES	
<i>Kokkonen v. Guardian Life Ins. Co. of America</i> , 511 U.S. 375 (1994)	4, 10
<i>Murchison v. Grand Cypress Hotel Corporation</i> , 13 F.3d 1483 (11th Cir. 1994)	7
<i>Navarro Savings Association v. Lee</i> , 446 U.S. 458 (1980)	10
 STATUTES	
FLA. STAT. Ch. 720.....	2
28 U.S.C. § 1332(a).....	10
 RULES	
Sup.Ct. R. 10	3
USDA M.D. Fla. Local Rule 3.08	6, 7
FED. R. CIV. P. 41	4

STATEMENT OF THE CASE

The Court of Appeals for the Eleventh Circuit accurately stated the pertinent, undisputed facts related to Bhadelia's claims. [Pet., App. 1-4]. Briefly stated, Mohammed Husein Bhadelia ("Bhadelia") sued Marina Club of Tampa Homeowners' Association, Inc. ("Marina Club") alleging that it: (1) retaliated against him in violation of the Americans with Disabilities Act and the Federal Fair Housing Act; (2) discriminated against him after the September 11, 2001 attacks; (3) improperly placed liens on his property; and (4) fraudulently represented that it had authority to manage the common areas of the condominium complex. Marina Club filed a counterclaim seeking (1) title to all common areas and amenities; (2) title to the unfinished building and all other non-developed land; and (3) an injunction preventing Bhadelia from maintaining a nuisance.

The parties settled their claims at a court ordered mediation. Bhadelia subsequently repudiated the settlement agreement. Marina Club thereafter moved to reopen the case and to enforce the settlement agreement before the deadline in the district court's administrative order of dismissal. The district court granted Marina Club's motion and reopened the case. After an evidentiary hearing, the district court enforced the settlement agreement and entered a form final judgment in accordance with and incorporating the terms of the settlement agreement.

I. CLARIFICATION OF THE RECORD

The facts set forth in the Petitioner's Statement of the Case do not accurately reflect the record. Marina Club is a homeowners association that was created by the original

developer of Marina Club of Tampa Condominiums under Chapter 720 of the Florida Statutes pursuant to the Declaration of Covenants, Restrictions and Easements (the "Declaration") recorded in the public records of Hillsborough County, Florida. According to the Declaration, Marina Club was incorporated to own and manage the Marina Club of Tampa Condominiums' common areas and amenities which were to be deeded by the original developer to Marina Club. The original developer's lender who financed the condominiums' conversion and development agreed to, joined in, and executed the recorded Declaration.

Unfortunately, the original developer failed and defaulted on its mortgage loan. The lender that financed the project also failed and the Resolution Trust Corporation ("RTC") foreclosed the mortgage that encumbered several unsold units and the shell of a condominium building that had been started in 1989. Marina Club was not named as a party and its interest in the condominium complex was not foreclosed. The RTC did not deed the condominium's common areas and amenities to Marina Club as required by the Declaration. Rather, after a foreclosure sale, the RTC executed a warranty deed conveying all of the mortgaged property including the common areas and amenities to Bhadelia. The condominium's common areas and amenities were included in the legal description of the warranty deed given by the RTC to Bhadelia.

Although Bhadelia quickly sold the unsold condominium units that had been completed by the original developer, as well as the units he subsequently completed, he allowed the building that had only been started to remain a shell. Over the years, the condominium unit owners

complained to Bhadelia and the City of Tampa. As a result of those complaints, the City of Tampa revoked Bhadelia's building permit for the unfinished building and refused to issue a new permit unless he submitted new plans and completed his building in accordance with the current building code instead of the code in effect in 1989 when its construction began. The current building code required Bhadelia to comply with the ADA'S accessibility requirements and to retrofit a sprinkler system inside the building. Bhadelia now has to spend an additional \$1,000,000 to complete his building under the current building code.

Bhadelia attempted to pass his additional costs for completing his building onto the Marina Club. He threatened to withhold use of the common areas, the streets, parking lots, and the amenities from the condominium unit owners unless they paid the cost of making his building and the condominium complex comply with the ADA's accessibility requirements incorporated into the current building code. When Marina Club refused Bhadelia's demands, he sued the Marina Club in the United States District Court for the Middle District of Florida. Marina Club then counterclaimed to quiet title to the common areas and amenities and to enjoin Bhadelia from maintaining a nuisance.

REASONS FOR DENYING THE WRIT

I. BHADELIA HAS NOT ARTICULATED A COMPELLING REASON TO JUSTIFY DISCRETIONARY REVIEW BY THIS COURT

"Review on a writ of certiorari is not a matter of right, but of judicial discretion." Sup. Ct. R. 10. "A petition for

writ of certiorari will be granted only for compelling reasons." *Id.* Bhadelia has not presented a compelling reason to justify this Court's discretionary review of the form final judgment entered by the district court pursuant to a mediation settlement agreement after it held an evidentiary hearing to determine whether the agreement should be enforced.

Citing this Court's ruling in *Kokkonen v. Guardian Life Ins. Co. of America*, 511 U.S. 375, 377 (1994), Bhadelia claims that the district court did not have jurisdiction to enforce the mediation settlement agreement because its administrative order of dismissal did not incorporate the terms of the agreement, or retain jurisdiction to enforce it. [Pet., p. 2-3]. Bhadelia's Petition does not accurately and completely describe the content of the district court's orders, and the events that occurred following the court ordered mediation. Moreover, the cases cited by the Petitioner are easily distinguished on the facts of this case where Marina Club moved to reopen the case within the time provided in Local Rule 3.08 and in the district court's administrative order of dismissal.

Unlike *Kokkonen*, the district court did not enter a judgment under its supervisory power after losing jurisdiction following the parties' dismissal of their case with prejudice by stipulation under FED. R. CIV. P. 41. Instead of stating that the case would be dismissed by a stipulation for dismissal, the parties' mediation settlement agreement required the district court to enter a form judgment quieting title in favor of the Marina Club. [Pet., App. 8-10]. Therefore, the parties never signed a stipulation stating that the case should be dismissed. Accordingly, rather than dismissing the case with prejudice, on August 27, 2004, the district court entered an order of dismissal

without prejudice on its own pursuant to Local Rule 3.08 after being advised by the court appointed mediator that the parties had executed a mediation settlement agreement. The district court's order invited the parties to submit a form final judgment or to move the court to reinstate the action upon good cause shown within 60 days of its order. If the parties did not do so, the district court's administrative dismissal would be with prejudice under Local Rule 3.08. [Pet., App. 16].

Before the district court's order became a final order of dismissal with prejudice, Marina Club moved to reopen the case on September 28, 2004. On September 29, 2004, the district court denied Marina Club's motion to reopen the case without prejudice and amended its August 27, 2004 order to give the parties until January 3, 2005 to submit a form final judgment over which the district court would retain jurisdiction. [Pet., App. 15]. Before the January 3, 2005 deadline, on December 22, 2004, Marina Club moved the district court to enforce the settlement agreement reached at mediation and to enter the judgment that it had submitted to the court. The district court entered an order that denied Marina Club's motion to enforce the mediation settlement agreement on December 22, 2004. In its order, the district court again amended its August 27, 2004 administrative order of dismissal to give the parties until February 4, 2005 to present a stipulated final judgment over which the court would retain jurisdiction. The district court's order warned the parties that if a stipulated final judgment was not presented by February 4, 2005, it would reopen the case and set it for trial. [Pet., App. 13-14].

At the meeting of the parties held on January 7, 2005 as required by the district court's order of December 22,

2004, Bhadelia's attorneys informed Marina Club that they could not stipulate to a form final judgment because Bhadelia had repudiated the settlement agreement and claimed that his brother, who attended mediation on his behalf, did not have authority to execute the agreement reached at mediation. Consequently, Marina Club moved the district court on February 4, 2005 for relief from its order of December 22, 2004, for entry of an order to show cause, for an evidentiary hearing and to compel settlement in accordance with the terms of the mediation settlement agreement. The district court then entered an order granting Marina Club's motion for relief, reopening the case, ordering Bhadelia to show cause and scheduling an evidentiary hearing to be held on February 24, 2005 to determine whether it should enforce the mediation settlement agreement. [Pet., App. 11-12].

Clearly, the district court never lost jurisdiction to conduct an evidentiary hearing and to enforce the settlement agreement under the circumstances of this case and the controlling law. Local Rule 3.08(b) of the Middle District of Florida provides: "When notified that a case has been settled and for purposes of administratively closing the file, the Court may order that a case be dismissed subject to the right of any party to move the Court within sixty (60) days thereafter (or within such other period of time as the Court may specify) for purposes of entering a stipulated form of final order or judgment; or, on good cause shown, to reopen the case for further proceedings." Local Rule 3.08. [Res., App. p.1]. The district court's August 27, 2004 order administratively dismissing the case entered in accordance with Local Rule 3.08 specifically gave the parties sixty days to present the court with a stipulated final judgment or move to reopen the case. Before the sixty day

deadline expired, Marina Club filed its then unopposed motion with the district court to reopen the case. Although the district court denied that motion without prejudice, it twice extended the sixty day deadline as authorized by Local Rule 3.08 by amending its August 27, 2004 administrative order of dismissal. Therefore, the instant case was never dismissed with prejudice and was properly reopened by the district court's order of February 7, 2005 after the district court ruled that Marina Club had shown good cause to reopen the case.

Bhadelia's claim in his Petition that the district court only had jurisdiction to reopen the instant case solely for the purpose of conducting an immediate trial has no merit and makes no sense. [Pet., p.7]. In its order of December 22, 2004, the district court stated that if the parties could not agree on a stipulated final judgment, it would have no choice but to reopen the case and set it for an immediate trial. There is no provision in Local Rule 3.08 which limits reopening the case to conducting a trial. Rather, Local Rule 3.08 provides that upon a showing of good cause, the case will be reopened for further proceedings. [Res., App. p.1]. "Reopened for further proceedings" certainly includes conducting an evidentiary hearing.

In footnote 1 to its February 7, 2005 order granting Marina Club relief from the December 22, 2004 order, the district court explained that it had hoped to avoid the need to expend further client and judicial resources by threatening the parties in its December 22, 2004 order with an immediate trial if the stipulated form final judgment was not presented to the court by its deadline. The district court had hoped to avoid the evidentiary hearing required by case law to determine whether the parties had reached an enforceable settlement agreement. *Murchison v. Grand*

Cypress Hotel Corporation, 13 F.3d 1483, 1486 (11th Cir. 1994). However, at the time that the district court entered its order, both the court and Marina Club were unaware that the mediation settlement agreement had been repudiated by Bhadelia because his counsel had not yet disclosed Bhadelia's change of mind. Upon learning that the mediation settlement agreement had been repudiated and that Bhadelia's counsel were refusing to agree to submit the form final judgment contemplated in and required by the mediation settlement agreement, the district court granted Marina Club's motion for relief from the court's order, it reopened the case and set an evidentiary hearing as required by the controlling case law to determine whether an enforceable settlement agreement had been executed. [Pet., App. 11-12].

Bhadelia claims in his Petition that he has been wrongfully sanctioned because of his inability to obtain a visa to travel to the United States in time for the February 24, 2005 evidentiary hearing. [Pet., p.4]. There is absolutely no evidence in the record that Bhadelia even attempted to obtain a visa to attend the evidentiary hearing. Moreover, there is absolutely nothing in the record that indicates that Bhadelia even asked the court for a continuance based upon his "alleged" inability to obtain a visa in time for the hearing. However, in response to the district court's question to Bhadelia's brother as to what would happen if the court scheduled an immediate trial and required Bhadelia to attend, his brother testified that Bhadelia could travel to Singapore and easily obtain a visa from there to the United States. [Res., App., p.2-4]. The case management order entered in this action by the district court on October 20, 2003 placed this action on the November, 2004 trial docket. Therefore, Bhadelia had more